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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,144	08/08/2003	Donald B. Gage	DC-05201	3411
33438 7590 10/16/2008 HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720				
EXAMINER GHESY, ADAM				
ART UNIT 2627		PAPER NUMBER		
NOTIFICATION DATE 10/16/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@hamiltontertile.com  
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# **Advisory Action** **Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/637,144	<b>Applicant(s)</b> GAGE ET AL.
<b>Examiner</b> ADAM R. GIESY	<b>Art Unit</b> 2627

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
**Examiner Note:** If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet.

/Wayne Young/  
Supervisory Patent Examiner, Art Unit 2627

/Adam R. Giesy/  
Examiner, Art Unit 2627

Continuation of 11. does NOT place the application in condition for allowance because: the rejections under 35 U.S.C. 103(a) have not been overcome (see section 13 for response to arguments).

Continuation of 13. Other: Applicant, on page 6 of the Response filed on 8/14/2008, argues that Examiner had previously recommended limiting claim 1 to require an external hard drive and the claim should now be allowable since it was amended as suggested by Examiner. Examiner respectfully disagrees. Examiner notes that in the Response to Arguments section of the non-final Office Action which was mailed on 2/7/2008 (same action that Applicant is referring to in aforementioned Response), Examiner suggests limiting the hard drive to be external "... in addition to any amendments to overcome the prior art." Examiner notes that the suggestion to further limit claim 1 to include an external drive was made in response to the Applicant's arguments that "[A] hard drive stores a write strategy outside of the optical drive..." (a limitation which did not currently exist in the claims at the time) in the Appeal Brief filed on 11/12/2007 (see page 3, section VII-A of the aforementioned Appeal Brief). Examiner in no way indicated that claim 1 would be allowable if amended to merely limit the the hard drive to incorporate an external hard drive (see non-final Office Action mailed on 2/7/2008, page 8, last paragraph). Examiner further asserts that the prior art rejection has not been overcome, and therefore claim 1 stands rejected as discussed in the Final Office Action, mailed on 7/22/2008.

Applicant, also on page 6 of the Response filed on 8/14/2008, argues that Examiner previously agreed that the Kurobe and Masaki reference did not disclose 'averaging power settings found at plural distributed areas.' and therefore claims 10 and 18 should be allowed. Examiner respectfully disagrees and notes that this is, yet again, a piecemeal analysis of the Response to Arguments section of the non-final Office Action mailed on 2/7/2008. Examiner notes that claim 10 currently limits the invention to 'averaging the determined power setting variations FOR the plural locations distributed across the optical medium...' (emphasis added). Examiner also notes that this merely limits claim 10 to average power settings at more than one location on the disc. Therefore, Examiner asserts that this concept is taught by Masaki (see Masaki Figure 17, step S3). Examiner agreed to the statement that Applicant made in the Appeal Brief, submitted on 11/12/2007, that the combination of Kurobe and Masaki 'did not disclose averaging the power settings found at plural distributed locations...'. Examiner noted that there was a difference between what was being argued and what was being claimed, and asserted that the references did not teach what was being argued, but that the references did teach what was being claimed (see non-final Office action mailed on 2/7/2008, page 9, 2nd paragraph). Examiner further asserts that since claims 10 and 18 have not been amended to overcome the prior art rejection as discussed in the final Office Action, mailed on 7/22/2008, the claims stand rejected.